

Serial No. 09/748,705

Docket No.: KCC-15,365.1

REMARKS

Applicants' undersigned attorney thanks the Examiner for his comments. Applicants respectfully request reconsideration of this patent application, particularly in view of above Amendment and the following remarks. Currently, Claims 1-6, 8-19, 21-35, and 37-42 are pending.

Amendment to the Claims

Claims 1-6, 8-19, 21-35, and 37-42 have been examined, with no claims being allowed. Claims 1, 14, and 27 have been amended herein to include the limitations of Claims 8-13, 21-26, and 37-42, respectively. Applicants therefore respectfully request cancellation of Claims 8-13, 21-26, and 37-42. No new matter has been added by this Amendment.

No additional fee is due for this Amendment because the number of independent claims remains unchanged and the total number of claims has been reduced.

Claim Rejections - 35 U.S.C. §103

The rejection of Claims 1-6, 8-19, 21-35, and 37-42 under 35 U.S.C. §103(a) as being unpatentable over Van Heusen (U.S. Patent 1,638,073) is respectfully traversed.

Van Heusen discloses a two-part fastening device wherein a projecting element having a relatively rough contact surface is configured to fit into a receiving element having a contact surface that engages with the contact surface of the projecting element.

Applicants' invention as recited in independent Claims 1, 14, and 27 requires that the fastening system be incorporated within a disposable absorbent article, namely a diaper, a training pant, a feminine hygiene product, a swimwear garment, or a medical garment. The Examiner states that the recitation of "A disposable absorbent article comprising a separable fastening system" has not been given patentable weight because the recitation occurs in the preamble.

KCC-1117

7

MR/S

Serial No. 09/748,705

Docket No.: KCC-15,365.1

"If the claim preamble, when read in the context of the entire claim, recites limitations of the claim, or, if the claim preamble is 'necessary to give life, meaning, and vitality' to the claim, then the claim preamble should be construed as if in the balance of the claim." *Pitney Bowes, Inc. v. Hewlett-Packard Co.*, 182 F.3d 1298, 1305, 51 USPQ2d 1161, 1165-66 (Fed. Cir. 1999).

The "absorbent article" limitation in the preamble of Claims 1, 14, and 27 is a limitation that originally stood on its own in dependent Claims 7, 20, and 36. Thus, the claim preamble "disposable absorbent article" recites a limitation of the claims. Because the incorporation of the limitations of Claims 7, 20, and 36 into Claims 1, 14, and 17, respectively, narrows the scope of the claimed invention, the claim preamble is necessary to give life, meaning, and vitality to the intended scope of the claim. Therefore, the claim preamble should be construed as if in the balance of the claim.

The fastening system in Van Heusen can be incorporated within a number of durable, non-absorbent garments such as belts, shoes, gaiters, gloves, spats, garters, and girdles (Page 3, lines 51-56). Van Heusen fails to disclose any disposable absorbent article applications. Specifically, Van Heusen fails to disclose or suggest a fastening system incorporated into a diaper, a training pant, a feminine hygiene product, a swimwear garment, or a medical garment. Instead, Van Heusen discusses the applicability of the fastener therein for use on garments that are laundered.

Van Heusen recognizes that buttons are a nuisance, especially with such garments as shirts or underwear which are repeatedly subjected to the laundering process. The buttons are torn off or are broken in the wringing or ironing machines. One of the primary objects of Van Heusen is to obviate the necessity for buttons or other fastening devices made of rigid or semi-rigid materials, and to provide an efficient fastening device that is neat and attractive to the eye, and free from the possibility of being cracked or broken in use *or in the laundry*.

The Examiner states his belief that a shirt, especially a T-shirt and/or underwear, absorbs perspiration and/or odor from a user, and the time period of when the shirt or undergarment is disposed of is based on personal preference. Thus, the

KCC-1117

8

MR/S

Serial No. 09/748,705

Docket No.: KCC-15,365.1

Examiner concludes that the articles disclosed in Van Heusen define a disposable absorbent article.

However, as recognized by those skilled in the art, "disposable absorbent garments" are generally intended for limited use and are not suitable for laundering. Since Van Heusen is directed to fasteners for use on launderable garments, Van Heusen thus teaches away from disposable absorbent garments.

Applicants' invention as recited in independent Claims 1, 14, and 27 further requires that the component having a cavity therein must include a part that can be lifted and folded back by at least about 90 degrees. Van Heusen discloses a component having a cavity therein, but fails to disclose any ability of a part of the same component to be lifted and folded back by at least about 90 degrees. In fact, Van Heusen discloses that the walls of the pocket forming the cavity are normally in close spaced relation and the construction and material used should be such that any tendency of the walls to spread apart (beyond the point necessary to admit the projecting element) will be minimized (Page 2, lines 103-109). Thus, Van Heusen teaches away from the receiving element having any part that can be lifted and folded back by 90 degrees or more.

The Examiner acknowledges that Van Heusen does not illustrate or disclose in the preferred embodiment that a part of the backing of the first component can be lifted and folded back at an angle as claimed by Applicants.

Van Heusen shows an embodiment in Fig. 6 wherein the projecting element 3c is folded over prior to being inserted into the receiving element 4c. While the projecting element 3c can be folded or lifted at any desired angle, there is no teaching or suggestion of providing the ability to lift any portion of the receiving element 4c. Thus, Van Heusen fails to disclose or suggest a *cavity* having any part that can be lifted and folded back by 90 degrees or more.

The Examiner suggests that it would have been obvious to one having ordinary skill in the art at the time of Applicants' invention to modify the part or flap to be attached to the first component having the cavity, since it has been held that a mere reversal of essential working parts of a device involves only routine skill in the art. However, even if the receiving element 4c were modified to include a folded

KCC-1117

9

MR/S

Serial No. 09/748,705

Docket No.: KCC-15,365.1

portion, such as shown on the projecting element 3c in Fig. 6, the result would essentially be an upside-down version of Fig. 6. More particularly, even if a flap extending from the receiving element 4c were folded, there is no portion of the *cavity* per se that would be folded in such an embodiment.

The Examiner takes the position that Fig. 6 of Van Heusen can be modified as an obvious reversal of parts to provide a fastener device operable with a single hand. Further, the Examiner believes that all of the structural components are present or shown in Van Heusen. To the contrary, Van Heusen fails to describe or illustrate, or even suggest, any *cavity* components including a portion that can be lifted and folded back by 90 degrees or more. Fig. 6 is a cross-sectional view, much like Fig. 2, thus the cavity portion 4c is logically much like that shown in Fig. 3 with stitching around all but one edge of the cavity and no portions that can be lifted and folded back by 90 degrees or more. Additionally, the ability to lift and fold back a portion of the cavity is not necessarily more conducive to single-hand opening than the embodiments of Van Heusen. Thus, there is no suggestion or motivation, either in Van Heusen or in the knowledge generally available to one of ordinary skill in the art, to modify the cavity portion of Van Heusen to include a portion that can be lifted and folded back by 90 degrees or more.

Based on Van Heusen, there is no reasonable expectation of success in achieving a disposable absorbent garment having a fastening system as claimed by Applicants.

For at least the reasons given above, Applicants respectfully submit that the teachings of Van Heusen fail to disclose or suggest Applicants' claimed invention. Accordingly, reconsideration and withdrawal of this rejection is respectfully requested.

KCC-1117

10

MR/S


Serial No. 09/748,705

Docket No.: KCC-15,365.1

Conclusion

Applicants believe that this case is now in condition for allowance. If the Examiner feels that any issues remain, then Applicants' undersigned attorney would like to discuss the case with the Examiner. The undersigned can be reached at (847) 490-1400.

Respectfully submitted,


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KCC-1117

11

MR/S